

## **REMARKS**

Entry of the foregoing amendment is respectfully requested.

### **Summary of Amendment**

By the foregoing amendment, Example 9 of the present application has been amended in the way requested in section 1 at page 2 of the present Office Action.

Applicants submit that entry of the present amendment is proper in that it does not raise any new issues and does not require any further search.

### **Summary of Office Action**

The Examiner requests that the trademark Eusolex® 232 recited in present Example 9 be capitalized and accompanied by the generic terminology.

Claims 12-17, 19, 20, 23, 24, 26, 32, 33 and 35-37 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for allegedly failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

Claims 12-17, 19, 20, 32, 33, 35 and 45 are rejected under 35 U.S.C. § 103(a) as allegedly being obvious over McGee et al., U.S. Patent No. 5,585,343 (hereafter "McGEE").

Claims 12, 16, 17, 20, 23, 24, 26, 20-33 (?) and 35 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as allegedly being unpatentable over Henkel KGaA, DE 4,318,171 (hereafter "HENKEL I") as evidenced by Derwent Abstract, AN 1995-014884.

Claims 12-17, 19, 20, 23, 24, 26, 32, 33, 35-37 and 41-47 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over HENKEL I in view of Derwent Abstract, AN 1995-014884, Rosano, U.S. Patent No. 4,146,499 (hereafter "ROSANO"), Hoppe et al., U.S. Patent No. 4,839,165 (hereafter "HOPPE"), Unilever PLC, EP 560 516 (hereafter "UNILEVER") and/or The Procter & Gamble Company, EP 616 027 (hereafter "P & G").

Claims 12, 16, 17, 20, 23, 24, 26, 20-33 (?) and 35 are rejected under 35 U.S.C. § 102(a) (?) as allegedly being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as allegedly being unpatentable over Henkel KGaA, DE 4,337,041 (hereafter "HENKEL II") as evidenced by Derwent Abstract, AN 1995-171245.

Claims 12-17, 19, 20, 23, 24, 26, 32, 33, 35-37 and 41-47 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over HENKEL II in view of Derwent Abstract, AN 1995-171245, ROSANO, HOPPE, UNILEVER and/or P & G.

### **Response to Office Action**

Reconsideration and withdrawal of the objections and rejections of record are respectfully requested in view of the foregoing amendment and the following remarks.

### ***Response to Objection to Specification***

The Examiner requests that the trademark Eusolex® 232 recited in present Example 9 be capitalized and accompanied by the generic terminology.

Applicants have complied with the Examiner's request by the foregoing amendment, thereby rendering the this objection moot.

***Response to Rejection under 35 U.S.C. § 112, Second Paragraph***

Claims 12-17, 19, 20, 23, 24, 26, 32, 33 and 35-37 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for allegedly failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. The rejection merely repeats the allegations set forth in the present Office Action.

Applicants respectfully traverse this rejection again. In this regard, the corresponding comments set forth in the response to the previous Office Action are expressly incorporated herein in order to avoid repetition. The Examiner has not addressed these comments at all, wherefore Applicants do not know why the Examiner has not found Applicants' corresponding arguments convincing. This is one of the reasons why it is respectfully requested that the finality of the present Office Action be withdrawn to give Applicants a fair and full opportunity to address the Examiner's corresponding concerns, which apparently still exist.

Applicants again respectfully request that the rejection of claims 12-17, 19, 20, 23, 24, 26, 32, 33 and 35-37 under 35 U.S.C. § 112, second paragraph be withdrawn.

***Response to Rejection of Claims under 35 U.S.C. § 103(a) over McGEE***

Claims 12-17, 19, 20, 32, 33, 35 and 45 are rejected under 35 U.S.C. § 103(a) as allegedly being obvious over McGEE. The rejection asserts that McGEE discloses laureth sulfate as polyethoxylated emulsifier and hydrocarbons as perfume oils. The rejection further asserts that McGEE discloses the use of both ethylene glycol monophenyl ether and fatty alcohols in the exemplified compositions and alleges that said materials "would have been expected to have W/O emulsifier properties". The rejection concedes that "McGee et al differs from the claims in the oil

component as claimed” and then asserts that “[t]o the extent McGee et al. lacks a disclosure of the claimed compositions in sufficient specificity as claimed, McGee et al clearly contemplated the sodium laureth sulfates, hydrocarbons and fatty alcohols.” Paragraph bridging pages 4 and 5 of the present Office Action.

This rejection is respectfully traversed. In particular, the Examiner recognizes that the compositions of McGEE differ from the claimed cosmetic preparation, *inter alia*, in that the component(s) of the oil phase are different. In this regard, the rejection fails to give any reason why it would allegedly have been obvious to one of ordinary skill in the art to use one or more of the components of the oil phase recited in, for example, present claim 12 in the perfume formulations of McGEE. Accordingly, Applicants are unable to address the Examiner’s position, which is another reason why withdrawal of the finality of the present Office Action is respectfully requested.

Applicants further note that the Examiner has not addressed the further issues with respect to claims 14 and 17 which Applicants have raised in the response to the previous Office Action, i.e., why one of ordinary skill in the art would want to incorporate, for example, an astringent or a detergent surfactant in the perfume formulations of MCGEE.

In view of the foregoing, Applicants again respectfully request that the rejection of claims 12-17, 19, 20, 32, 33, 35 and 45 under 35 U.S.C. § 103(a) over McGEE be withdrawn.

***Response to Rejection of Claims under 35 U.S.C. § 102(b)/103(a) over HENKEL I***

Claims 12, 16, 17, 20, 23, 24, 26, 20-33 (?) and 35 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as allegedly being unpatentable over HENKEL I as evidenced by Derwent Abstract, AN 1995-014884. In this regard,

the Office Action relies especially on the abstract, the Examples, Table 1 and the PIT emulsions disclosed in HENKEL I and alleges that this document “discloses finely divided emulsions made by the phase inversion temperature method of making emulsions having utility in shampoos, bath soaps, shower preparations as cosmetic emulsions” and that HENKEL I “makes their microemulsions by the same phase inversion temperature method as applicants”. The rejection further alleges that HENKEL I discloses the use of decyl esters of oleic acids and the use of glycerol monoesters of stearic acid and fatty alcohols of 8-30 carbon atoms.

Applicants respectfully traverse this rejection as well. In this regard, Applicants point out that the mere fact that the finely divided emulsions of HENKEL I are made by the phase inversion temperature (PIT) method does not allow the conclusion that these emulsions are microemulsions as recited in the rejected claims. This is confirmed by the disclosure of HENKEL I itself. In particular, at page 2, lines 28-31 HENKEL I states (translation, emphasis added):

The droplet diameter of such finely divided emulsions – in the following referred to as PIT emulsions – is of an order of magnitude of 100-300 nanometers (nm), i.e., they are not yet optically isotropic, single-phase systems as are present in solubilizates and microemulsions, the particle diameters of which are far below 100 nm.

The above statement in HENKEL I provides clear evidence that the PIT emulsions described in the Examples thereof are not microemulsions, in contrast to the cosmetic preparation recited in present independent claim 12. For this reason alone, HENKEL I neither anticipates nor renders obvious the subject matter of any of the present claims. In view thereof, withdrawal of the rejection of claims 12, 16, 17, 20, 23, 24, 26, 20-33 and 35 under 35 U.S.C. § 102(b)/103(a) over HENKEL I is warranted and respectfully requested.

***Response to Rejection of Claims under 35 U.S.C. § 103(a) over HENKEL I in View of  
DERWENT, ROSANO, HOPPE, UNILEVER and/or P & G***

Claims 12-17, 19, 20, 23, 24, 26, 32, 33, 35-37 and 41-47 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over HENKEL I in view of Derwent Abstract, AN 1995-014884, ROSANO, HOPPE, UNILEVER and/or P & G. The rejection concedes that HENKEL I (and Schambil ?) differs from the rejected claims in the incorporation of allegedly conventional cosmetic ingredients but essentially alleges that ROSANO cures this deficiency of HENKEL. The rejection further asserts that to the extent the claims differ in particular emulsifiers employed, HOPPE, UNILEVER and P & G allegedly “disclose the use of alkyl ether sulfates or non-ionic ethoxylates in combination or alternatively with alkyl ether carboxylates in cleaning and/or hair care compositions. In this regard, the rejection also alleges that “[t]hese references are combinable because they teach cleaning compositions and particularly hair care compositions and the surface active agents suitable therefor[e]”.

Applicants respectfully traverse this rejection. Applicants respectfully submit that, as set forth in detail above, the cosmetic preparations recited in the present independent claims differ from the compositions of HENKEL I *inter alia* in that HENKEL I does not teach or suggest a cosmetic preparation which is or is based on a microemulsion.

ROSANO, HOPPE, UNILEVER and P & G do not cure these deficiencies of HENKEL. For example, ROSANO does not teach or suggest employing a microemulsion *per se* as a cosmetic preparation, let alone as one of the cosmetic preparations recited in present claim 12. Moreover, ROSANO is directed to a process for the preparation of microemulsions which is completely unrelated to the method for making the finely divided (PIT) emulsions described in HENKEL I, wherefore there is no apparent reason for one of ordinary skill in the art to combine the teachings of

HENKEL I and ROSANO.

Further, none of HOPPE, UNILEVER and P & G exemplifies any microemulsions. P & G even expressly states that the concentrated cleaning composition described therein is not in the form of a microemulsion (see, e.g., claim 1).

Moreover, the concentrated cleaning composition of P & G is primarily for cleaning hard surfaces and may also be of interest for other cleaning compositions including dishwashing and laundry detergent compositions (page 1, lines 3-5). It is not seen what such a concentrated cleaning composition has to do with a cosmetic preparation.

Example 1 of HOPPE relied on by the Examiner is a shampoo composition comprising, *inter alia*, fatty alcohol polyglycol ether carboxylic acid (Alkypo RLM 150). Applicants do not know the structure of Alkypo RLM 150. At any rate, it is not seen why one of ordinary skill in the art would have any reason to replace the emulsifiers in the PIT emulsions of the Examples of HENKEL I by Alkypo RLM 150, and neither does the present Office Action offer any explanation in this regard.

UNILEVER relates to hair care compositions which comprise a perfluoropolyether material and a silicone conditioning agent as critical components (see, e.g., abstract and claim 1). UNILEVER mentions in passing that the compositions can be present as a microemulsion but does not contain any specific disclosure in this regard. None of the numerous exemplary compositions of UNILEVER appears to be a microemulsion.

Moreover, while UNILEVER mentions ethoxylated and propoxylated anionic surfactants as optional components of the compositions disclosed therein, none of the specific examples of anionic surfactants mentioned at page 6, lines 9-14 appears to be comprised in any of the classes of O/W emulsifiers recited in present independent claims 36, 41 and 44.

At any rate, Applicants fail to see why one of ordinary skill in the art would have any reason to replace the emulsifiers in the PIT emulsions of the Examples of HENKEL I by any of the anionic surfactants which are mentioned in UNILEVER as optional components of hair care compositions which comprise a perfluoropolyether material and a silicone conditioning agent as critical components (and which do not appear to be present in the compositions of HENKEL I), and neither does the present Office Action offer any explanation in this regard.

Applicants submit that for at least all of the foregoing reasons, the rejection of claims 12-17, 19, 20, 23, 24, 26, 32, 33, 35-37 and 41-47 under 35 U.S.C. § 103(a) over HENKEL I in view of DERWENT, ROSANO, HOPPE, UNILEVER and/or P & G is unwarranted, wherefore withdrawal thereof is respectfully requested as well.

***Response to Rejection of Claims under 35 U.S.C. § 102(a)/103(a) over HENKEL II***

Claims 12, 16, 17, 20, 23, 24, 26, 20-33 (?) and 35 are rejected under 35 U.S.C. § 102(a) (?) as allegedly being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as allegedly being unpatentable over HENKEL II as evidenced by Derwent Abstract, AN 1995-171245. The present Office Action does not give any specific reasons for this rejection and merely indicates that the basis for the rejection is essentially as set forth for HENKEL I.

Applicants respectfully traverse this rejection as well. In particular, Applicants assume (there is no explicit statement in the present Office Action in this regard) that the Examiner is of the opinion that the PIT emulsions described in HENKEL II are microemulsions. This is, however, not the case. For example, HENKEL II does not refer to any microemulsions but only refers to emulsions which are “finely divided” and long-term stable. These emulsions are prepared – like the

finely divided emulsions of HENKEL I - according to the PIT method (see, e.g., abstract of HENKEL II). Further, at page 6, lines 44-51 of HENKEL II the properties of the emulsions prepared in Examples B1 and B5 and in Comparative Example V1 (prepared below the phase inversion temperature) are discussed as follows (translation):

The obtained O/W emulsions of Examples B1 to B5 and of Comparative Example V1 were further examined under a microscope at a 400-fold magnification. If oil droplets could be recognized the emulsion was categorized as "coarse"; however, if no oil droplets could be recognized, the emulsion was categorized as "fine". Accordingly, it can be assumed that with finely divided emulsions the droplet size is below 1  $\mu\text{m}$ . It turned out that all of Examples B1 to B5 which had been prepared as described above under 2.2 resulted in fine emulsions. In contrast thereto, the emulsion which was prepared merely in a conventional manner (i.e., according to the method described under 2.1, cf. Experiment V1) and not according to the phase inversion method was coarse.

The above passage of HENKEL II provides evidence that the finely divided emulsions of Examples B1 to B5 of HENKEL II had a droplet size of merely "below 1  $\mu\text{m}$ ", which is a clear indication that they were not microemulsions. This is further confirmed by the results which are described for the droplet sizes of the emulsions of Examples B1 to B5 after a dilution thereof with water at a dilution factor of 2.26 (page 6, lines 55-56 of HENKEL II). According to Table 4 at page 8 of HENKEL II the droplet sizes of these diluted emulsions ranged from 227 nm (B3\*) to 660 nm (B2\*), i.e., far above the droplet size of a microemulsion (which is far below 100 nm, see HENKEL I; see also page 2, lines 23-28 of the present specification in this regard). For this reason alone, HENKEL II neither anticipates nor renders obvious the subject matter of any of the present claims. In view thereof, withdrawal of the rejection of claims 12, 16, 17, 20, 23, 24, 26, 20-33 (?) and 35 under 35 U.S.C. § 102(a)/103(a) over HENKEL II is warranted and respectfully requested.

***Response to Rejection of Claims under 35 U.S.C. § 103(a) over HENKEL II in View of  
DERWENT, ROSANO, HOPPE, UNILEVER and/or P & G***

Claims 12-17, 19, 20, 23, 24, 26, 32, 33, 35-37 and 41-47 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over HENKEL II in view of Derwent Abstract, AN 1995-171245, ROSANO, HOPPE, UNILEVER and/or P & G. In this regard, the rejection merely refers to the comments with respect to the rejection of the same claims under 35 U.S.C. § 103(a) over HENKEL I in view of DERWENT, ROSANO, HOPPE, UNILEVER and/or P & G.

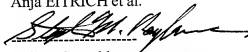
Withdrawal of this rejection is requested for at least all of the reasons which are set forth above with respect to the rejection under 35 U.S.C. § 103(a) over HENKEL I in view of DERWENT, ROSANO, HOPPE, UNILEVER and/or P & G which apply to the present rejection as well.

**CONCLUSION**

In view of the foregoing, it is believed that all of the claims in this application are in condition for allowance, which action is respectfully requested. If any issues yet remain which can be resolved by a telephone conference, the Examiner is respectfully invited to contact the undersigned at the telephone number below.

January 2, 2008  
GREENBLUM & BERNSTEIN, P.L.C.  
1950 Roland Clarke Place  
Reston, VA 20191  
(703) 716-1191

Respectfully submitted  
Anja EITRICH et al.

  
Neil F. Greenblum  
Reg. No. 28,394

Stephen M. Roylance  
Reg. No. 31,296